

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CENTEX HOME EQUITY COMPANY, LLC,)	Case No. 1:04CV1819
)	
Plaintiff,)	
)	Judge Ann Aldrich
vs.)	
)	
JANICE WASHINGTON, et al.,)	
)	
Defendants.)	<u>MEMORANDUM AND ORDER</u>

This is a diversity action, in which plaintiff Centex Home Equity Company of Denton County, Texas ("Centex"), seeks to foreclose on a mortgage issued to LaShon Washington, now deceased. The mortgage in question conveyed to Mr. Washington an interest in the property located at 4380 University Parkway in University Heights, Ohio. Centex names as defendants Janice Washington, fiduciary of the estate of LaShon Washington, and Shontese Washington, minor heir to said estate, as well as Plymouth Park Tax Services, LLC, thought to have an interest in the disputed property.

Now before the court are two motions filed by Centex. The first seeks appointment of a guardian ad litem to represent the interests of the minor heir (Docket No. 5). The second seeks entry of a default judgment in Centex's favor (Docket Nos. 13, 16). For the following reasons, the court grants the first motion and denies the second.

Centex filed its complaint on September 8, 2004. On September 9, Centex filed Returns of Service for each of the defendants named in the complaint. To date, only Plymouth Park Tax Services has filed its answer. Ordinarily, this lassitude on the part of the other named defendants would entitle

Centex to an entry of default in its favor. However, the court is prohibited from acceding to Centex's request for this sanction by the provisions of Federal Rule of Civil Procedure 55(b), which states that "no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein." FED. R. CIV. P. 55(b)(2).

In its motion to appoint a guardian ad litem to represent the interests of minor heir Shontese Washington, Centex acknowledges this limitation on its right to seek entry of default. Centex therefore asks the court to exercise its prerogative to appoint a guardian, as provided for elsewhere in the Federal Rules. In accordance with Rule 17(c), "The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person." *Id.* Centex argues persuasively that Janice Washington, the natural guardian of Shontese Washington, has not adequately represented the interests of Shontese in this matter, and therefore that an exercise of the court's appointment power is warranted.

However, Centex's parallel interest in obtaining judgment in its favor casts doubt over the neutrality of its own selection of a specific guardian ad litem. Pursuant to the guidelines imposed by Rule 17(c), the court therefore appoints Jennifer Roach, of Thompson Hine LLP, 3900 Key Center, 127 Public Square, Cleveland, Ohio, 44114.

As Shontese Washington has been heretofore unrepresented, the court denies Centex's previous motions for entry of default judgment. Ms. Roach will be permitted to file an appearance and an answer on Shontese Washington's behalf at any time within 20 days of the entry of this order.

IT IS SO ORDERED.

s/Ann Aldrich

ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: November 10, 2005